CPMG / KA / BG-GPO/13/2003-2005

ವಿಶ್ವಮಾನವ ವರ್ಷ



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೩೯	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಫೆಬ್ರವರಿ ೨೬ ೨೦೦೪ (ಫಾಲ್ಗುಣ ೦೭, ಶಕ ವರ್ಷ ೧೯೨೫)	ಸಂಚಿಕೆ ೦೯

ಭಾಗ - ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi
NOTIFICATION
No: SI AASUE/2/ CHUTHA AA/04 Dated: 27th January, 2004 Magha 7, 1925 (Saka)

No.82/KT-LC/3/02/2004:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Karnataka at Bangalore dated 26th September, 2003 in Election Petition No. 3 of 2002 filed by Shri Vatal Nagaraj calling in question the election of Shri Saleem Ahmed, Shri B. K. Chandrashekhar, Shri Kattimani Ashok, Smt. Rathna, Dr. V.S. Acharya, Shri D. Madegowda and Shri Khot Sachidananda to the Legislative Council of Karnataka held in June, 2002.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 26th DAY OF SEPTEMBER 2003
BEFORE
THE HON'BLE MR JUSTICE H.L. DATTU
ELECTION PETITION No.3/2002

Between
Sri Vatal Nagaraj
S/O Madappa,
Major, No. 197, II Main Road,
Mahalakshmipuram,
West Of Chord Road.
Bangalore. Petitioner

(By Sri S. Basavaraj & C P Girasagar Advs.)

AND:

1. Sri Saleem Ahmed
   Aged: Major, S/O Aziz Ahmed,
   No. 6, 2nd Cross, C. Block,
   Vidyanagar, Haveri-581 110.

2. B. K. Chandrashekar
S/O Kashipathaiah,
Major, No. 4032, 28th Cross, 17th Main Road,
Banashankari 2nd Stage, Bangalore-560070.
3. Sri Kattimani Ashok.
S/o Krishnaji, Major, Horapete Road, Badami Post,Bagalkot Dist.
4. Smt. Ratna
W/o Veerashetti
Major, No. 92. Nijampur Village Bidar Tq & Dist.
5. D.R. V. S. Acharya
S/o Katte Srinivas Acharya,
Major, "Ravi Kiran" KunjiBettu. Udupi-576102.
6. Sri D. Madegowda
S/o Doddathammaiah
Major No. 36, I Main Road, Kumbarakoppalu, Mysore-570017.
7. Sri Koth Sachidananda,
S/o Lakshmappa Koth,
Major, Post Hebbal Taluk, Hukkeri, Belgaum. Respondents.
(By Sri: Jayakumar S. Patil & Rajendra C. Desai,
ADVs. FOR R1 & 7
SRI F.V.Patil, Adv. For R3,
Smt. Bharathi Nagesh & A. Kasturi, Advs. For R6
Sri T.R. Subbanna, Sr. Adv. For M/s Siva & Siva A/s, For R2
Sri B. V. Acharya, Sr. Adv. For sri C. Shashi
Kantha, For R5 Sri Ravi B. Naik, Adv. For R4)

This Election Petition is Filed under Section 81 of The Representation of Peoples Act 1951. Praying to Declare the election of Respondents 1 to 7 as Members of Karnataka Legislative Council Said to have Been Declared on 8.6.2002 as Null and Void on account of Improper Rejection of the Petitioner's Nomination paper by the Returning Officer, etc.

This Election Petition Having Been Heard and Reserved For Orders. This day the Court Pronounced The following.

ORDER

In this Election Petition filed under Section 81 of Representation of the Peoples Act, 1951 (Act' for short), petitioner calls in question the legality or otherwise of the orders passed by the Returning Officer appointed for conducting Biennial Elections to Karnataka Legislative Council dated 7th day of June, 2002 and the consequential declaration of results of the elections, declaring respondent Nos. 1 to 7 having been duly elected as members of Legislative Council of Karnataka by the Members of the Legislative Assembly dated: 8.6.2002.

2. The State Election Commission had issued notification calling for an election, for electing seven members to the Karnataka Legislative Council by the Members of Karnataka Legislative Assembly to fill the seats in that House of Seven Members retiring on 30th June 2002, on the expiration of their term of office. Another notification is issued on 29.5.2002 laying down a detailed timetable for various stages of election programme. According to the calendar of events published. The last date for making nominations for the election before the Returning Officer was not later than 5th day of June 2002. The Scrutiny of the nomination papers, was scheduled to be held, on 6th June 2002. The last date for withdrawal of the candidature was before 3.00 P.M. on 8th June 2002 and the poll to take place, if necessary, on 15th June 2002 between the hours 10.00 A.M. and 2.00 P.M. These Notifications are also published in the Official Gazette.

Since the petitioner intended to contest the elections, he filed his nomination paper on 5.6.2002, which was the last date fixed for filing nominations. The scrutiny of all the nomination papers was scheduled to be held on 6.6.2002, in the chambers of the Returning Officer. At the time of scrutiny, Sri Chennigappa, Member, Legislative Assembly, Koratagere Constituency and Sri C.B. Suresh Babu, Member, Legislative Assembly, Chikkanayakanahalli Constituency, Tumkur District, filed their letter dated: 6.6.2002 before the Returning Officer and in that, they had stated that they learnt through news paper dated 6.6.2002 and were shocked to know that they have signed the nomination paper of Sri Vatal Nagaraj

as the proposers in the Biennial elections to the Legislative Council from the Assembly Constituency and further, they have not proposed the nomination of Sri Vatal Nagaraj and the alleged signature on the nomination paper is not theirs. To substantiate their Statement, they were asked by the Returning Officer to file their affidavits by 2.30 P.M. to consider their objections. It appears, at that stage, the Counsel for Sri Vatal Nagaraj objected to the said persons being present during scrutiny of the nomination papers and also filed the petitioner's affidavit rebutting the objections filed by the said proposers. The Returning Officer after holding a summary enquiry, by his order dated 7.6.2002 has rejected the nomination papers of Sri Vatal Nagaraj as invalid, for the reason of insufficient number of proposers. In his order, the Returning Officer has observed as under:

"In the present case, the persons who have supposed to have signed the nomination paper, have appeared before me in person and have denied the same by filing affidavits.

I see no reason why I should accept the contention of the Learned Counsel for Sri Vatal Nagaraj that I have to compare the signatures found on the nomination paper with the signatures available on the nomination paper filed during the 2000 elections. In my humble opinion, acceptance of the above contention and comparison of the signature on the said document would not be necessary, when the persons who have supposed to have signed the nominations have denied them in person and by filing affidavits. I do not find any reason why I should not accept the written statement made by the two MLA's which are also supported by their sworn statement that the signatures on the nomination papers are not theirs.

For the foregoing reasons, I answered the point raised in the affirmative and hold that the nomination paper of Sri Vatal Nagaraj as invalid for the reason of insufficient number of proposers. Thus the nomination paper of Sri Vatal Nagaraj is held to be invalid and accordingly rejected."

3. Since there was no contest, respondent Nos. 1 to 7 are declared as elected members of Karnataka Legislative Council from the Assembly Constituency on 8.6.2002, which was the last date for withdrawal of nomination papers. The result of the elections is notified in the Official Gazette published on 29.6.2002.

4. Petitioner, being aggrieved by the rejection of his nomination paper and the consequential declaration of respondent Nos. 1 to 7 as elected members of Karnataka Legislative Council by the members of Karnataka Legislative Assembly, is before this Court for the following relief:

"I Declare the election of respondent Nos. 1 to 7 as members of Karnataka Legislative Council said to have been declared on 8.6.2002 as null and void, on account of improper rejection of petitioner's nomination papers by the Returning Officer."

5. The contesting respondents have filed their detailed written statement, justifying the order passed by the Returning Officer. In that, they contend that the nomination paper of the petitioner was rightly rejected by the Returning Officer, since Sri Chennigappa and Sri Suresh Babu, who are supposed to be the proposers' of petitioner's candidature had not signed petitioner's nomination paper. Some of the respondents have also taken contention that, since the petitioner has failed to demonstrate that improper rejection of his nomination paper has materially affected the result of the elections held and, therefore, the petitioner is not entitled to the relief sought in the election petition.

6. The following issues had been framed by this Court. They Are:

"I Whether Election Petition is maintainable for non-compliance of the mandate of Section 117 of the Representation of the People Act, 1951, as the Security for costs so deposited in the name of third party is not in accordance with Sub-Section (1) of 117 of the Act?

2. Whether the petitioner proves that his nomination papers for election to the office of Karnataka Legislative Council, Schedule to have been held on 15.6.2002 has been improperly rejected by the Returning Officer?

3. What Order?"

7. Parties have filed memo's before this Court stating that they do not intend to adduce their oral evidence. Those memo's had been taken on record.

8. By consent, parties to the proceedings have marked Election Petition and the annexures filed along with the petition, copy of Memorandum of Writ Petition No. 23043/2002 and entire order sheet pertaining to the petition and the certified copy of the letter dated: 5.6.2002 in the name of Sri K.M. Krishna Moorthy, submitted by the election petitioner before the Returning Officer.

9. Sri Basavaraj, learned Counsel appearing for the petitioner, firstly contends, that in view of the language employed in sub-section (1) and (5) of Section 36 of the Act, the Returning Officer could not

have permitted Sri Chennigappa and Sri Suresh Babu to be present at the time of scrutiny of the nomination papers and further could not have permitted them to raise objections and file affidavits denying their signatures on the nomination paper of the petitioner and thereby could not have permitted the above said two persons to withdraw the proposal made once, which is otherwise impermissible in law. Secondly, the learned Counsel would contend, that in view of sub-section (6) of Section 36 of the Act, the Returning Officer must record a finding that the signature of the proposers on the nomination paper are not genuine and for that purpose must hold a summary enquiry in regard to genuiness or otherwise of the signatures of the proposers on the nomination paper and this process involves actual verification of the signatures of the proposers on the nomination paper. Since such an enquiry was not made by the Returning Officer, the entire proceedings are vitiated. It is further argued, that though a specific request was made by the petitioner in the affidavit filed before the Returning Officer to compare the signatures of the proposers on his nomination paper with their admitted signatures on the petitioner's nomination paper for the elections held during the month of June 2000 for the Karnataka Legislative Council, the same was rejected on the ground that the examination of the signatures under Section 36(2)(c) of the Act as unnecessary, in view of the subsequent action of the above said two persons in appearing before him and filing affidavits denying their signatures on the nomination paper. This action of the Returning Officer, according to the learned Counsel is not only arbitrary but also highly illegal.

The learned Counsel further contends that the order passed by the Returning Officer is clearly illegal and contrary to the provisions of the Act and consequently, all proceedings relating to the rejection of the petitioner's nomination paper is without jurisdiction. While elaborating this submission, the learned Counsel contends that the entire decision making process by the Returning Officer which has culminated in the rejection of petitioner's nomination paper is vitiated by total departure from the mandatory requirement of Section 36(2)(c) of the Act. According to the learned Counsel, the enquiry under Section 36(2)(c) of the Act Must have been with reference to genuiness or otherwise of the signature on the nomination paper. However, the point for consideration which the Returning Officer has raised is, whether the contention of Sri Chennigappa and Sri Suresh Babu, that the nomination of Sri Vatal Nagaraj, has not been proposed can be accepted? This issue is totally outside the purview of Section 36 of the Act and, therefore, the Returning Officer committed the fundamental error in diverting the enquiry in a direction, which is contrary to the requirement of Section 36 of the Act. In sum and substance, the argument of the learned Counsel is that, the Returning Officer has abdicated the duty cast upon him and therefore, the entire decision making process culminating in rejection of the petitioner's nomination paper is vitiated. The learned Counsel would submit that the proviso appended to sub-section (5) of Section 36 of the Act must be limited only to that sub-section and cannot be made used for the purpose of sub-section (1) of Sec. 36 of the Act. In aid of his submission, the learned Counsel relies on the observations made by the Apex court in the case of DWARAKA PRASAD VS. DWARAKA DAS reported in AIR 1975 SC 1758 and SRI TRIBHOVANDAS HARIBHAI VS. GUJARAT REVENUE TRIBUNAL reported in AIR 1991 SC 1538.

10. In Re. DWARAKA PRASAD's case, the Court has explained the General Rule of construction of a proviso in a Section. In the said decision, the Court was pleased to observe as under:

"A Proviso must be limited to the subject matter of the enacting clause. If is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 AC 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction

"The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

11. In Re. TRIBHUVANDAS HARIBHAI's case, the Supreme Court has observed as under.

"6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main

provision to which is has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case, which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

12. In aid of his submission regarding the nature of enquiry that requires to be made by the Returning Officer at the time of scrutiny of nomination papers, for the purpose of Section 36 of the Act, the learned Counsel would place reliance on the observations made by the Apex Court in the case of RAKESH KUMAR VS. SUNIL KUMAR reported in 1999(2) SCC 489, RATTAN ANMOL SINGH AND RAM PRAKASH VS CHANDRA SHEKHAR ATMA RAM AND OTHERS reported in 1954 SLJ 731. INDIAN NATIONAL CONGRESS (I) VS. INSTITUTE OF SOCIAL WELFARE AND OTHERS reported in (2002) 5 SCC 685.

13. In Re. RAKESH KUMAR's case, while interpreting proviso to Section 36(5) of the Act, the Apex Court was pleased to observe as under:

20. Through the proviso, the legislature has provided that in case an objection is raised during the scrutiny to the validity of a nomination paper of a candidate, the Returning Officer may give an opportunity to the candidate concerned to rebut the objection by giving him time "not later than the next day". This is in accord with the principles of natural justice also. Since no other candidate had raised any objection to the claim of the respondent of being the official candidate of the BJP and the objection had been raised by the Returning Officer suo motu, the mandate of the proviso to Section 36(5) of the Act warranted the holding of a summary enquiry, to determine the validity of the nomination paper by the Returning Officer, while exercising his quasi-judicial function. In the present case, the respondent had sought an opportunity to meet the objection, but even if he had not sought such an opportunity, the Returning Officer ought to have granted him time to meet the objection in the interest of justice and fair paly."

14. In Re. ANMOL SINGH's case, the Apex Court was pleased to observe as under:

"But we find it impossible to say that when the law requires the satisfaction of a particular officer at a particular time his satisfaction can be dispensed with altogether. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the 'subscribing' required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The 'satisfaction' of the Returning Officer which the rules require is not in our opinion, any the less important and imperative."

15. In Re. INDIAN NATIONAL CONGRESS (I)'s case, the Apex Court was pleased to observe as under:

"27 What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi judicial authority."

The Court was further pleased to observe as under:

"29. We do not find any merit in the submission. At the outset, it must be borne in mind that another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions. The aforequoted passage from Administrative Law by Wade & Forsyth is wholly inapplicable to the present case. Rather, it goes against the argument of learned counsel for the respondent. The aforequoted passage shows that where an authority whose decision is dictated by policy and expediency exercises administratively although it may be exercising functions in some respects as if it were judicial, which is not the case here."

16. In aid of his submission, that improper rejection of nomination papers in an election would materially affects the selection, the learned Counsel would place reliance on the observations made by the Apex Court in the case of SANTOSH YADAV VS. NARENDRA SINGH reported in (2002) I SCC 168. In the said decision the Court was pleased to observe as under:

"7. Parliament has drawn a clear distinction between an improper rejection of any nomination and the improper acceptance of any nomination. In the former case, to avoid an election, it is not necessary to further prove that the result of the election has been materially affected. The underlying reasoning for this was well set out by a Constitution Bench of this Court in SURENDR NATH KHOLSA VS. S. DALIP SINGH. There is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. The fact that one of several candidates for an election was kept out of arena is by itself a very material consideration. The officer rejecting the nomination paper of a candidate may have kept out most desirable candidate, the most desirable from the point of view of the electors and the most formidable candidate from the point of view of the other candidates, from seeking election and therefore parliament felt that an improper rejection of any nomination paper is conclusive proof of the election being void and therefore dispensed with the need of evidence being tendered in proof of the result of the election having been materially affected. On the other hand, in the case of an improper acceptance of a nomination paper, proof is required by way of evidence demonstrating that the coming into the arena of an additional condidate has had the effect on the election in such a manner that the best choise of the electorate was excluded."

17. In support of his submission, that when a law requires a thing to be done in a particular manner, it must be done in that manner and no other, the learned Counsel relies on the observations made by the Apex Court in the case of G. E. BOARD VS. GIRIDHARLAL reported in AIR 1969 SC 267 and in the case of CHARLES G. SAKARIA VS. C. MATHEW reported in AIR 1980 SC 1230.

18. In Re. GIRIDHARLAL's case, the Apex Court has stated as under:

"These provisions confer a power on the State Electricity Board to purchase the property of the licensee but that right can be exercised only in the manner provided in the Act and not in any other way. It must be remembered that the provisions in question empower the State Electricity Board to interfere with the property rights of the licensee. Therefore such a power will have to be strictly construed. The legislature has prescribed a mode for the exercising of that power and hence that power can be exercised only in that manner and in no other manner. See Nazir Ahmad v. King Emperor, 63 Ind App 372= (AIR 1960 SC 576). Before the option to purchase the undertaking can be exercised, the State Electricity board must call upon the licensee by means of a notice in writing within the period mentioned in Section 6(1) to sell the undertaking to it on the expiration of the period for which licence was given. The impugned notice does not require the licensee to sell the undertaking. It merely notifies the respondent that the appellant Board has decided to exercise and shall exercise the option of purchasing the respondent's undertaking on 3rd January, 1963, the date on which the licence granted to him by the Government of Baroda expired."

19. In Re. CHARLES G. SAKARIA's case, the Court was pleased to observe as under:

"23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power, then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits Government to modify the method, as the learned single Judge has pointed out. In this view, we see nothing objectionable with the Government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures."

20. The learned Senior Counsels Sri. B. V. Acharya and Sri. T.R. Subbanna are in the forefront to sustain the order passed by the Returning Officer in rejecting the nomination paper filed by the petitioner and consequential declaration of results of the election by the Returning Officer. The learned Senior Counsel Sri. B. V. Acharya, refers to the orders made by the Returning Officer and points out, firstly the nature of enquiry held by him and secondly, the rejection of the nomination paper filed by the petitioner is under Clause (b) of sub-section (2) of Section 36 of the Act and not under Clause (c) of sub-section (2) of Section 36 of the Act. The learned Senior Counsel further submits that whatever may be the ground on which the nomination papers are rejected by the Returning Officer and whether that rejection is proper or improper can be the subject matter before this Court in an election petition, because, this Court has

oiriginal jurisdiction. The learned Senior Counsel further contends that the petitioner, before the Returning Officer had not produced any evidence to demonstrate that the nomination papers filed before the Returning Officer is valid in law. Therefore, the burden is on the petitioner to demonstrate before this Court that the order of rejection of the nomination paper by the Returning Officer is improper.

21. The learned Senior Counsel woruld further contend that having regard to the scope of enquiry, nature of enquiry and right given to the parties to lead their evidence in support of their case in an election petition filed, since the petitioner failed to lead any evidence in support of his case, the election petition must fail and on the other hand, the evidence available on the record supports the conclusion that the rejection of the nomination papers is quite proper. In aid of his submission, that the scope and nature of enquiry before this Court in an election petition is not merely confined to objections or material before the Returning Officer, petitioner could still prove that his nomination paper is not invalid on any ground, the learned Senior Counsel relies on the observations made by the Apex Court in the case of N.T. VELUSWAMI THEVAR VS. RAJA NAINAR AND OTHERS reported in AIR 1959 SC 422, BIRAD MAL SINGHVI VS. ANAND PUROHIT reported in AIR 1988 SC 1796 and MOHD. YASSIN SHAH VS. ALI AKBAR KHAN reported in 58 ELR 247.

22. In VELUSWAMI THEVAR's case, while explaining the extent of enquiry that is permissible before the Tribunal, the Apex Court was pleased to observe:

" Reading S. 100 (1)(c) in the context of the whole enactment, an enquiry before the Tribunal must embrace all the matters as to qualification and dis-qualification mentioned in S. 36(2). It cannot be limited to the particular ground of disqualification which was taken before the returning officer. AIR 1958 Mad 198 Reversed.

The jurisdiction of the returning officer in hearing objections to nomination papers in defined in S. 36(2) and the Tribunal must therefore have jurisdiction to decide all the questions which can be raised under that Section. The fact that a particular ground which could have been raised was not, in fact, raised before the returning officer does not put an end to his jurisdiction to decide it, and what he could have decided if it had been raised, could be decided by the Tribunal, when raised.

The enquiry before the Tribunal is not restricted to the material placed before the returning officer relating to a ground, but all evidence bearing on that ground can be adduced before the Tribunal. The enquiry which a returning officer has to make under S.36 is summary in character. He may make such summary enquiry, if any, as He thinks necessary; he can act suo motu. Such being the nature of the enquiry, the right which is given to a party under S. 100(1)(c) and S. 100(1)(d)(i) to challenge the propriety of an order of rejection or acceptance of a nomination paper will become illusory, if the Tribunal is to base its decision only on the material placed before the returning Officer: AIR 1954 Raj 204 & 1958-15 ELR 260 (MP) & Special Appeal No. 1 of 1957 (Andh. Pra) Approved."

(emphasis supplied by me)

The word 'improper' which occurs in both S.100 (1)(c) and S. 100(1)(d)(i) must bear the same meaning in both the provisions, unless there is something in the context to the contrary.

Clause (c) and (d) (i) of S 100(1) provide a remedy to persons who are aggrieved by an order improperly rejecting or improperly accepting any nomination. In the context it appears that the improper rejection or acceptance must have reference to S. 36(2) and that the rejection of a nomination paper of a candidate who is qualified to be chosen for election and who does not suffer from any of the dis-qualifications mentioned in S. 36(2) would be improper within S. 100(1) (c) and that, likewise, acceptance of a nomination paper of a candidate who is not qualified or who is disqualified will equally be improper under S. 100(1)(d)(i).

The jurisdiction which a Tribunal exercises in hearing an election petition even when it raises a question under S.100(1)(c) is not in the nature of an appeal against the decision of the returning office. An election petition is an original proceeding instituted by the presentation of a petition under S. 81 of the Act. The respondents have a right to file written statements by way of reply to it; issues have to be framed, and subject to the provisions of the Act, the provisions of the Civil Procedure Code regulate the trial of the petition. All the parties have the right to adduce evidence, and that is of the essence of an original proceeding as contrasted with a proceeding by way of appeal. That being the character of the proceedings the rule applicable is that which governs the trial of all original proceedings; that is, it is open to a party to put forward all grounds in support of or negation of the claim, subject only to such limitations as may be found in Act. (S) AIR 1955 SC 233 Expl."

(emphasis supplied by me)

23. In BIRAD MAL SINGHVI's case, the Apex Court while saying that it is open to a party to place fresh or additional material before the High Court to show that the Returning Officer's order rejecting the nomination paper was improper, was pleased to observe:

"During the scrutiny the Returning Officer is under a statutory duty to satisfy himself that the candidate who may have filed nomination paper possesses the necessary constitutional qualification for contesting the election. Enquiry during scrutiny is summary in nature as there is no scope for any elaborate enquiry at that stage. Therefore it is open to a party to place fresh or additional material before the High Court to show that the Returning Officer's order rejecting the nomination paper was improper. It should be borne in mind that the proceedings in an election petition are not in the nature of appeal against the order of the returning officer. It is an original proceeding."

24. In MOHD. YASSIN SHAH's case, while holding that when rejection not on permissible grounds, it can still be justified on grounds which is permissible, the Court was pleased to observe:

"The appeal must be allowed and the High Court's order reversed. While it is true that under S. 47(2) it is not open to the Returning Officer to reject a nomination paper merely on the ground of the absence of the candidate or his proposer, but where, as in the present case, in the order rejecting the nomination paper, the Returning Officer had indicated the objection taken by the Returned candidate regarding the genuineness of the proposer's signature of the other candidate and had also observed that in view of the objection it was not possible to verify the signature in the absence of the candidate and the proposer had been used not for the purpose of rejecting the nomination paper but for the signature of the proposer was not genuine.

The returned candidate had clearly raised the question that the nomination paper could be properly rejected under 47(2)(c) of the Act even on the ground that the signature of the proposer was not genuine. The High Court therefore committed an error in not deciding this particular plea and finding that the Returning Officer had improperly rejected the nomination paper on the ground of the absence of the candidate and the proposer and allowing the election petition.

Even if the ground on which the nomination paper has been actually rejected is not a permissible ground if the successful candidate can make out a case that the nomination paper could have been properly rejected on one of the grounds mentioned in Section 47 of the Act, the rejection would not be improper and the election would be upheld."

25. The learned Senior Counsel would further submit, that at the time of scrutiny of nominations, an objection in regard to the validity of nomination paper of a candidate can be raised either by any of the candidates or by any of their proposers, election agents or authorised representatives, and such objection can also be raised by the Returning Officer suo-motu if he has any doubt in respect of any nomination paper. In support of this contention, the learned Senior Counsel relies on the observation made by a Full Bench of this Court in the case of BANAGALORE GRAIN MERCHANTS ASSOCIATION VS. DISTRICT REGISTRAR FOR SOCITIES AND ANOTHER reported in ILR 2001 Karnataka 766 and in the case of BADRIVISHAL PILLIE VS. J.V. NARASING RAO reported in AIR 1959 AP 116.

26. The learned Senior Counsel would nextly contend that the petitioner had projected Sri Chennigappa as the proposer in the nomination paper filed by him before the Returning Officer. Even where the signature is not genuine, he is still called the proposer and therefore, Sri Chennigappa can raise objection at the time of scrutiny of the nomination papers. According to the learned Senior Counsel, viewed from this angle, Sri Chennigappa cannot be called a stranger to the proceedings and he can certainly raise objection about the genuineness of his signature in the nomination paper filed by the petitioner for the elections to the Legislative Council. Therefore, the objection raised is proper and valid and in view of the objections, the Returning Officer did hold a summary enquiry and since the petitioner failed to prove that Sri Chennigappa and Sri Suresh Babu infact had signed his nomination paper, the Returning Officer is justified in rejecting the nomination paper of the petitioner. The learned Senior Counsel would further submit that the onus is heavy on the petitioner to prove that Sri Chennigappa and Sri Suresh Babu had signed the nomination paper and since that burden is not discharged by the petitioner, the Returning Officer is justified in rejecting the nomination paper under Section 36(2)(b) of the Act. In support of this contention, the learned Senior Counsel relies on the observations made by the Apex Court in the case of LAXMAN SIDDAPPA NAIK VS. KATTIMANI CHANDAPPA JAMPANNA AND OTHERS reported in AIR 1968 SC 929 and CH. RAZIK RAM VS. J. S. CHOUHAN AND OTHERS reported in AIR 1975 SC 667.

27. In Re. LAXMAN SIDDAPPA NAIK's case, the Court was pleased to observe:

"In a case where both sides do not lead evidence the matter must be decided on the basis of the original onus which lies on the election petitioner. The election petition cannot succeed because of the weakness of evidence of the successful candidate. The election being something which cannot be readily set aside, there must be proof and convincing proof that a person is not properly chosen to fill a particular seat. Mere suspicion or surmise is not sufficient after the Returning Officer accepts a candidature and the candidate is chosen in the election. Once a community has gone to the polls and the voters have exercised their franchise it is necessary for an election petitioner to show that the candidate is not entitled to the seat. In other words, the burden originally lies on the election petitioner and he cannot succeed unless he discharges that burden. The High Court cannot in such a case go into the matter from a different angle and attempt to contradict the Presidential Order which it is not entitled to do."

28. In Re. RAZIK RAM's case, the Apex Court has stated:

"Even if the nature of the trial of an election petition is not the same in all respects as that of a criminal trial, the burden of proving each and every ingredient of the charge in an election petition remains on the petitioner. If a fact constituting or relevant to such an ingredient is pre-eminently within the knowledge of the Respondent, it may affect the quantum of its proof but does not relieve the petitioner of his primary burden. The petitioner must adduce prima facie proof even of such a fact. That is to say he must establish such other relevant facts and circumstances which if un-rebutted or left unexplained by the opposite party would raise a presumption as to the existence of such fact in issue."

29. The learned Senior Counsel then would contend, that the Returning Officer was justified in not acceding to the request made by the petitioner in his affidavit to compare the signatures of the proposers on his nomination paper with their signatures on the petitioner's nomination paper in the earlier elections in view of the settled legal position in law, that the comparison of signature not admissible, when decision can be based on evidence. In aid of his submission, the learned Senior Counsel would invite my attention to the observations made by the Apex Court in the case of O. BHARATHAN VS. K. SUDHAKARAN reported in AIR 1996 SC 1140 and in the case of AJIT SAVAN MAJAGAVI VS. STATE OF KARNATAKA reported in AIR 1997 SC 3255.

30. In BHARATHAN's case, the Apex Court has observed as under:

"Where in a Election Petition, the High Court on appreciation of oral evidence found that witnesses examined on the side of the election petitioner have either admitted that they have voted two or they must be deemed to have voted two times in view of similarity of signatures on two counter-foils alleged to be related to those witnesses and proceeded to compare the singatures found in the counterfoils to find out whether both the signatures were to be by the same person. Without the aid of an expert or the evidence of persons conversant with the disputed signatures. The approach made by the High Court was not in conformity with the spirit of S. 73 of the Evidence Act."

31. In Re. AJIT SAVANT MAJAGAVI's case, the Apex Court has observed:

"Section 73 does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73."

32. Sri. T. R. Subbanna, learned Senior Counsel, apart from adopting the arguments canvassed by learned Senior Counsel Sri. B. V. Acharya, would contend that the provisions of Section 117 of the Act relating to deposit of security for costs are mandatory and since there is contravention in the mode of making deposit, the election petition requires to be rejected in limine. This issue was not seriously pressed by the learned Counsels for an answer by this Court.

33. The learned Counsel Sri. Jayakumar Patil appearing for respondent Nos. 1 and 7 would contend that the persons mentioned in Section 36 (1) of the Act can be present, as of right, at the time of

scrutiny of nomination papers by the Returning Officer and it is not necessary to seek anybody's permission including the Returning Officer, but that does not mean that others are prohibited from being present at the time of scrutiny of nomination papers and others can be present with the permission of the Returning Officer. Alternatively, it is stated that the Returning Officer has the discretion to permit the objectors, if any, to be present at the time of scrutiny of nomination papers.

34. Sri. Ravi B. Naik, Sri. F. V. Patil and Smt. Bharathi Nagesh, learned Counsels appearing for other respondents, while adopting the arguments advanced by learned Senior Counsel Sri B.V. Acharya would submit, that in the facts and circumstances of the case, the Returning Officer is justified in rejecting the nomination paper of the petitioner in view of non-compliance of the mandatory provisions of Section 33 of the Act.

35. The only issue now remains to be considered is, whether the petitioner proves that his nomination paper for Biennial Election to the Legislative Council was improperly rejected by the Returning Officer?

The Apex Court while considering the statutory requirement of election law in JAGANNATH VS. JASWANT SINGH AND OTHERS reported in 1954 SC 257 has observed as under:

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity, but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

36. The word 'ELECTION' connotes the entire process commencing with the issue of notification calling for election and culmination in the declaration of the result of the election. Nomination is the process formally offering oneself as a candidate for an elective office. Elections to a State Legislative Council are held both by the members of the State Legislative Assembly and also from Council Constituencies in the State. The nomination for an election by the members of the State Legislative Assembly requires to be made in form 2-D as prescribed under the Rules. Every nomination of a candidate must be subscribed by a prescribed number of proposers. Proviso appended to sub-section (1) mandates that if a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a Constituency unless nomination paper is subscribed by ten proposers being electors of the Constituency, but the only one proposer will be sufficient to nominate candidate set up by a recognised political party. Each nomination paper must be signed by the candidate as assenting to his nomination and also subscribed by certain number of electors as proposers. Every candidate to be duly nominated in an election has also to make or cause to be made on his behalf, a deposit of specified amount, commonly called the security deposit and the receipt obtained in this behalf is required to be enclosed along with the nomination paper.

37. Omitting the requirements which are unnecessary, in order that a candidate is validly nominated and his nomination paper does not suffer from any defects at the time of scrutiny, the requirements which must be borne in mind and strictly observed are that the candidate must be qualified and must not be disqualified under the Constitution and on the date fixed for scrutiny of nomination papers, the nomination must be made in the prescribed form of nomination paper and duly completed in all aspects; the nomination papers must be subscribed by the requisite number of electors as proposers and the nomination paper must be signed both by the candidate and each of the proposers; the nomination paper must be accompanied by the receipt showing the requisite security has been made as required under Section 117 of the Act.

38. At the time of presentation of nomination paper, the law requires upon the Returning Officer to make a preliminary scrutiny of each nomination paper as soon as it is presented to him by or any candidate. In such preliminary enquiry, he is required to check and satisfy himslef that the name of the candidate and the names of his proposers and the electoral roll numbers as given in the nomination paper are the same as those entered in the relevant electoral rolls.

39. The scrutiny of nominations is important function of the Returning Officer, and any lapse on his part might ultimately result in the election being declared void. The improper rejection of nomination paper by the Returning Officer at the time of scrutiny of nomination papers, the entire election could be declared as void.

40. The election Commission of India has issued instructions in exercise of its statutory functions and those instructions are contained in the "Hand Book of Returning Officers." Chapter VI of the Hand Book deals with scrutiny of nomination papers by the Returning Officer. Apart from others, in this chapter, it is specifically provided, that the scrutiny of the nomination papers shall be done by the Returning Officer and not by any of the Assistant Returning Officers and admit at the scrutiny only such persons as are entitled to be present under Section 36 of the Act, viz., the candidates, their election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate and no other person. The Hand Book also provides, that if no objection has been raised to a nomination paper, still the Returning Officer must satisfy himself that the nomination paper is valid in law and if for any reason, any objection is raised to any nomination paper, he is instructed to hold a summary enquiry to decide the objection and to treat the nomination paper to be either valid or invalid and take a decision in each case giving brief reasons particularly where an objection is raised or where the nomination paper is rejected. In the Hand Book, the advice of the Election Commission to all the Returning Officer is not to reject any nomination papers, unless they are sure of the gorunds of rejection as legally sustainable as the improper acceptance of a nomination paper does not ipso facto invalidate an election and in such a case, it has to be further proved that such improper acceptance of the nomination paper has affected the result of the election materially.

41. The scrutiny of the nominations is a quasi-judicial function of the Returning Officer. The enquiry by the Returning Officer is to the question of validity or otherwise of nomination paper is a summary enquiry and the rival candidates do not have a legal right to lead evidence as in judicial proceedings though the Returning Officer may entertain any evidence either in support or rebuttal of any objection raised in regard to any nomination paper. The law envisages that the Returning Officer shall complete the enquiry proceedings on the date fixed for the purpose itself and he shall not allow any adjournment of the proceedings, except under the circumstances envisaged under Section 36(5) of the Act. But, if an objection is raised in regard to the nomination of any candidate, the Returning Officer may allow time to such candidate to rebut it and can adjourn the proceedings for that purpose. But, such adjournment cannot be granted later than the next day, but one following the date fixed for the scrutiny. At the scrutiny of nominations, as objection in regard to the validity of a nomination paper of a candidate can be raised either by any of the candidate or by any of their proposers, election agents or authorised representatives present. Such objection can also be raised by the Returning Officer suo-motu, if he has any doubt in respect of any nomination paper.

42. Under the Act, the Returning Officer is authorised to reject the nomination of a candidate on the ground that on the date fixed for scrutiny of nominations, the candidate either is not qualified or is disqualified for being chosen as a Member of Parliament or as the case may be of the State Legislature concerned under the Constitution or the law; there has been a failure to comply with any of the provisions of Section 33 of the Act relating to presentation of nomination paper or of Section 34 of the Act relating to the making of requisite security deposit in the manner prescribed; the signature of the candidate or any of his proposers on the nomination paper is not genuine. The decision of the Returning Officer accepting or rejecting the nomination of a candidate can be challenged only by means of an election petition, after completion of the election process and not at any intermediary stage, when the election process is still on.

43. Now coming back to the facts of the present case; Section 33 of the Act provides for presentation of nomination paper and requirements for a valid nomination.

Proviso to sub-section (1) of Section 33 of the Act envisages that a candidate not set up by a recognised political party shall not be duly nominated for an election, unless the nomination paper is subscribed by ten proposers being electors of the Constituency. The case of the petitioner before the Returning Officer was, that ten members of Karnataka Legislative Assembly, including Sri Chennigappa and Sri Suresh Babu have signed his nomination paper as proposers being electors of the Constituency. The petitioner had filed his nomination paper on 5.6.2002 i.e. the last date for filing of the nomination papers as notified in the calendar of events published by the Election Commission.

In view of Section 35 of the Act, the Returning Officer at the end of each day on which nominations can be filed, has to give a public notice of each of the nomination papers received by him during the hours prescribed for that purpose on that day. In this notice all necessary details with regard to the name of each candidate, his address, party to which he belongs, electoral roll numbers and details with regard to his proposers and their electoral numbers are required to be given, so that the general public and others interested in getting due information will have knowledge with regard to intending candidates at the election. A copy of this notice will also be required to be affixed by the Returning Officer in some conspicuous place in his office. According to the affidavits filed by Sri Chennigappa and Sri Suresh Babu, the nomination paper filed by the petitioner had been published in the news paper and coming to know that their names have been included as proposers to the candidature of the petitioner in the elections scheduled to be held for Karnataka Legislative Council, they appeared before the Returning Officer on 6.6.2002 and brought to the notice of the Returning Officer at the time of scrutiny of the nomination papers, that they have not subscribed their names as proposers to the candidature of the petitioner. Based on this information, the Returning Officer had allowed time to both the parties to rebut the assertion made by the objectors to the petitioner and to the objectors to substantiate their objections. Both the parties had filed their affidavits. The objectors, on oath, would state that they have not proposed the nomination of the petitioner and alleged signatures on the nomination paper is not theirs. Inturn, petitioner also has filed his affidavit, inter alia contending that the objections of the above two persons is incorrect and that they have specifically proposed his name and they have specifically expressed their wish to support him in the Biennial Elections to the Karnataka Legislative Council scheduled to be held on 8.6.2002 and further would request the Returning Officer to compare the signatures of the proposers on his nomination paper with their admitted signatures on the petitioner's nomination paper for the Karnataka Legislative Council's elections held during June 2000. Based on the affidavits filed by the parties, since the proposers themselves have appeared and denied their signatures, the Returning Officer holds that the nomination paper filed by the petitioner does not satisfy the requirements under Section 33(1) of the Act and rejects the nomination paper filed by the petitioner.

44. The scrutiny of nominations has to be made by the Returning Officer in a transparent manner in the presence of the candidates and their representatives as provided under sub-section (1) of Section 36 of the Act. At the scrutiny of nomination paper, an objection in regard to the validity of nomination paper of a candidate can be raised either by any of the candidates or by any of their proposers, election agents or authorised representatives present. Such objections can also be raised by the Returning Officer suo-motu, if he has doubt in respect of any nomination paper.

45. The primary contention of the learned Counsel for petitioner, that in view of Section 36 (1) of the Act read with proviso to Section 36(5) of the Act, the Returning Officer has committed a grave irregularity and his action is contrary to mandatory statutory provisions, in not only permitting one Sri Chennigappa and Sri Suresh Babu, Members of Legislative Assembly to be present at the scrutiny of nomination papers and raise objections about the genuineness of their signatures on the nomination paper of the petitioner and based on such objections and without holding a detailed enquiry as required by law, has improperly rejected the nomination paper of the petitioner.

46. The scrutiny of the nomination papers has to be made by the Returning Officer in the presence of the candidates and their representatives. Under Section 36(1) of the Act each candidate can be represented by four persons including the candidate himself. Even according to the petitioner, Sri Chennigappa and Sri Suresh Babu, are his proposers since they have signed his nomination paper. Therefore, their presence cannot be said at the time of scrutiny of nomination papers by the Returning Officer is contrary to mandatory provisions. Even otherwise also, in sub-section (1) of Sec. 36 of the Act, the Legislature has consciously used the expression no other person may attend'. Ordinarily, the word 'may' is not a word of compulsion. It is an enabling word and it only. confer capacity, power or authority and imply discretion as observed by the Apex Court in the case of CHINNAMMARKATHIAN @ MUTHU GOUNDER & ANOTHER VS. AYYAVOO PERIANAGOUNDER & OTHERS reported in AIR 1982 SC 137. In the context in which it is used whether it is obligatory or mandatory may be ascertained by considering the intention of the Legislature, the nature and design of the Statute and the consequences which would flow from construing it one way or the other. In the context in which the expression is used, in my view, it is an enabling provision providing for a procedure for scrutiny of nomination papers, but not compulsive provision.

Then coming to sub-section (5) of Sec. 36 of the Act, the provision mandates the Returning Officer not to allow adjournment of scrutiny of nomination papers except under those contingencies enumerated in the sub-section itself.

Proviso that is appended to this sub-section permits the Returning Officer to adjourn the proceedings till the next day under two contingencies, namely, if any objection is raised suo-motu by the

Returning Officer to any nomination paper of a candidate and secondly, by "any other person". The proviso is an exception only to sub-section (5) of Sec. 36 of the Act. In view of this, apart from the circumstances envisaged under sub-section (5), the Returning Officer is authorised to adjourn the proceedings to a subsequent date to enable the candidate whose nomination paper is objected either by the Returning Officer or "any other person" to rebut such objection.

The learned Counsel appearing for the petitioner would vehemently contend that "any other person" which finds a place in sub-section (5) of Sec. 36 of the Act cannot be read into the provisions of sub-section (1) of Sec. 36 of the Act and therefore, the Returning Officer by permitting the persons other than authorised under sub-section (1) of Sec.36 of the Act at the time of scrutiny of nomination papers, has violated the statutory provision and in view of that, the entire proceedings including the rejection of the nomination paper of the petitioner is invalid and illegal. This submission of the learned Counsel in my opinion may look attractive but on a deeper consideration of the matter, has no merit whatsoever. As I have already pointed out, sub-section (1) of Sec. 36 of the Act is only a procedural provision providing for procedure for scrutiny of the nomination papers at the time and place notified and in the presence of four persons including the candidate himself. This sub-section does not speak of either the Returning Officer taking any objection to a nomination paper of any candidate nor those persons present at the time of scrutiny of nomination papers to raise any objection with regard to the nomination paper of any candidate. The procedure for raising objection either by the Returning Officer on his own or by any other person is provided under sub-section (5) of Sec.36 of the Act. That "any other person" cannot be restricted to the person authorised under sub-section (1) of Sec.36 of the Act. The expression "any other person" used in the proviso to sub-section (5) of Sec.36 of the Act is clearly distinguished by the Legislature from the words "persons" used in sub-section (1) of Sec.36 of the Act. If the intention of the Legislature was that the "persons" should be understood in the sense that the persons authorised to be present under sub-section (1) of Sec.36 of the Act, then it was not necessary to emphasise by using the expression "any other person". The expression "any other person" cannot possibly be read to mean "any named person".

Sri Chennigappa and Sri Suresh Babu, who are said to be the proposers for petitioner's nomination paper bring to the notice of the Returning Officer that they have not proposed the nomination of petitioner and the alleged signature on the nomination paper is not theirs. The Returning Officer grants time to the petitioner to rebut the objections of the objectors. Under Section 36 of the Act, the Returning Officer has to make a summary enquiry. It further provides that on the date of scrutiny of papers, the Returning Officer shall examine the nomination papers and shall consider all objections which may be made to any nomination and he may either on objection filed by any other person or on his own motion, after holding such summary enquiry, if any, reject any nomination on the grounds specified in Clauses (a), (b) and (c) of sub-section (2) of Section 36 of the Act. Section 36(2)(b) of the Act provides for the rejection of the nomination paper, on the candidate's failure to comply with any of the provisions of Section 33 or Section 34 of the Act. These provisions are plain and therefore, they do not admit any other interpretation. Non-compliance of Section 33 of the Act is fatal to the nomination. Proviso to Section 33 of the Act lays down a mandatory requirement for a valid nomination. Since and Returning Officer with the available documentary evidence on record has come to the conclusion, that the nomination paper filed by the petitioner does not satisfy the requirements of Section 33 of the Act, he has rejected the nomination paper filed by the petitioner. However, it was still open to the election petitioner to have placed the additional material before this Court to show that infact that objectors had subscribed their signatures on his nomination paper and for reasons best known to them, they are reassailing and disputing their signatures by a method known in law atleast before this Court and thereby demonstrated before this Court that the Returning Officer has improperly rejected his nomination paper. The burden lies originally on the election petitioner and he cannot succeed unless he discharges that burden. As I have already observed, the objectors were before the Returning Officer in person and they had not only brought to the notice of the Returning Officer that they have not signed the nomination paper of the election petitioner and to support their oral statement, they had also filed affidavits before the Returning Officer. Except denying their statement by filing his affidavit, petitioner had not supported his statement by any other cogent evidence. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence. The execution of private document must be proved by adducing evidence, except in a case where the document is more than twenty (20) years old and comes from proper custody, in which case, then arises a presumption of due execution and formal validity of that document. Due execution is proved by evidence of the signature of the person by whom the document purports to be signed and by evidence of attestation. That was neither done before the Returning Officer or before this Court in this election petition. In a situation like this, in my view, the Returning Officer was not only justified in accepting the version of the objectors, who were present in person before him and also in rejecting the nomination paper of the petitioner for non-compliance of provisions of Sec.33 of the Act.

47. Sri Basavaraj, learned Counsel for petitioner would submit that though a specific request was made by the petitioner in the affidavit filed before the Returning Officer to compare the signatures of the proposers on his nomination paper with their admitted signatures on the petitioner's nomination paper for

the Karnataka Legislative Council held during the month of June 2000, the same was rejected on the ground that the examination of the signatures under Section 36(2)(c) of the Act is unnecessary in view of the subsequent action of the above said two persons appearing before him and filing affidavit denying their signatures on the nomination papers. This reasoning of the Returning Officer according to the learned Counsel is not only arbitrary but also wholly illegal. The learned Counsel also contends that by this illegal procedure, the Returning Officer has permitted the above said two persons to withdraw the proposal made once, which is otherwise impermissible in law.

48. In my view, this submission of the learned Counsel for petitioner has no merit whatsoever. The law does not enjoin the Returning Officer to send for the previous nomination paper of the petitioner for the Karnataka Legislative Council Elections held during the month of June 2000. The law casts a duty on the candidates to satisfy the Returning Officer by producing relevant and cogent evidence and if he fails to do so, the Returning Officer is bound to reject the nomination paper. The law does not require the Returning Officer to send for the records of the previous election for the purpose of verifying the eligibility of a candidate. This is a case where the statute requires the candidate to produce the prescribed evidence and failure to comply with the said requirement leads to rejection of the nomination papers. It is now well settled that whenever the statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to specific consequence, it would be difficult to accept that the failure to comply with the said requirement leads to any other consequence.

49. As observed by Apex Court in several of its decisions, the proceeding before this Court is an original proceeding. The enquiry during scrutiny is summary in nature. There is no scope for any elaborate enquiry at that stage. The purpose of scrutiny is to see whether a candidate suffers from disability or disqualification or is disqualified to stand for election. If the nomination papers filed by the candidates are not in conformity with the provisions of the Act, the Returning Officer has no other alternative except to reject their nomination papers. As observed by Andhra Pradesh High Court, which view I intend to adopt in this case, if one objection is sufficient to decide the issue concerning the disqualification, it is not incumbent on him to go into other grounds. The law enjoins the Returning Officer to reject the nomination of the candidate on any of the grounds envisaged under Clauses (a) to (c) of sub-section (2) of Section 36 of the Act. Whether such rejection is proper or improper can be agitated by adducing relevant evidence in an election petition filed before this Court. The trial of the election petition affords full opportunity to both the parties to putforth their respective cases. In the present case, though such an opportunity was available to the petitioner, he did not choose to make use of it. The reasons are unknown. That being the factual position, it is difficult to accede to the request made by the petitioner in this election petition.

50. In the result, the following:

ORDER

I. Election Petition fails and accordingly, it is rejected.

II. In the facts and circumstances, parties are directed to bear their own cost. Ordered accordingly.

By Order,

PR-9 Sharan Pal Singh, Secretary

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 20 ಕೇನಿಪ್ರ 2004, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 7ನೇ ಫೆಬ್ರವರಿ 2004

2003ನೇ ಸಾಲಿನ 20.11.2003 ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ F.No. 1/2/2001-1GC dated 2.11.2003 ([S.O.1330(E)]ನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF FINANCE

(Department of Company Affairs)

NOTIFICATION

New Delhi, the 20th November, 2003

S.O. 1330(E):- In pursuance of clause (a) of sub-section (2) of section 9 of the Company Secretaries Act, 1980 (56 of 1980), and in supersession of the notification of the Government of India, in the Ministry of Law Justice and Company Affairs number S.O. 670(E) dated the 16th September, 1982 the Central Government hereby notifies the following four regional constituencies for the purposes of elections to the Council of the Institute of Company Secretaries of India under the said clause, namely:

1. **Eastern India Regional Constituency-** Comprising the States of Arunachal Pradesh, Assam, Bihar, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura and West Bengal.
2. **Northern India Regional Constituency-** Comprising the States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh and Uttaranchal and the Union territories of Chandigarh and Delhi.

3. **Southern India Regional Constituency-** Comprising the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu and the Union territories of Andaman and Nicobar Islands, Pondicherry and Lakshadweep.
4. **Western India Regional Constituency-** Comprising the States of Chattisgarh, Gujarat, Madhya Pradesh, Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu.

[F. No.1.2.2001-IGC]
U.K. JINDAL, Under secy.
ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,
ಎಲ್. ಸಿದ್ದಯ್ಯ
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ
ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 10

ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 21 ಕೇನಿಪ್ರ 2003, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 10ನೇ ಫೆಬ್ರವರಿ 2004

2003ನೇ ಸಾಲಿನ 21.10.2004 ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Prevention of Food Adulteration (5th Amendment) Rules 2003 ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ P-15014/1/2003-PH (Food) dated: 21.10.2003 [GSR 831 (E)]ನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health)
NOTIFICATION
New Delhi, the 21st October, 2003

G.S.R.831(E).- Whereas by notification of the Government of India in the Ministry of Health and Family Welfare (Department of Health) number GSR 401 (E) dated the 14th May, 2003, at pages 1 to 3, in the Gazette of India, Extraordinary, Part II, Section 3 sub-section (i) dated the 14th May, 2003, draft of certain rules further to amend the Prevention of Food Adulteration Rules, 1955 was published, as required by sub-section (i) of section 23 of the Prevention of Food Adulteration Act, 1954, (37 of 1954), for inviting objections and suggestions from all persons likely to be affected thereby before the expiry of a period of sixty days from the date on which the copies of the Official Gazette containing the said notification, were made available to the public;

And whereas, the copies of the said Gazette were made available to the public on 19th May 2003.

And whereas, objections or suggestions received from the public within the specified period on the said draft rules have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by Section 23 of the Prevention of Food Adulteration Act, 1954, the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to amend the Prevention of Food Adulteration Rules, 1955, namely,-

RULES

1. (1) These rules shall be called the Prevention of Food Adulteration (5th Amendment) Ruels, 2003.
   (2) They shall come into force on the 1st day of January, 2004
2. In the Prevention of Food Adulteration Rules, 1955, in rule 42,-
   (i) In sub-rule (ZZZ) (14), after the declaration,

"PACKAGED DRINKING WATER"

the following declaration shall be inserted,-

"One time usable plastic bottles of packaged drinking water shall carry the following declaration

CRUSH THE BOTTLE AFTER USE

-(iI) In sub-rule (ZZZ) (15), after the declaration"

"NATURAL MINERAL WATER"

the following declaration shall be inserted,-

"One time usable plastic bottles of mineral water shall carry the following declaration

CRUSH THE BOTTLE AFTER USE

[No. P.15014/1/2003-PH(Food)]
B.P. SHARMA, Jt. Secy.

Foot Note: The Prevention of Food Adulteration Rules, 1955, were published in Part II, Section 3 of the Gazette of India vide S.R.O. 2106, dated the 12th September, 1955 and were last amended vide No. G.S.R. 771 (E) dated 29.9.2003

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

ಎಲ್. ಸಿದ್ದಯ್ಯ

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ

ಪಿ.ಆರ್. 11 ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 23 ಕೇನಿಪ್ರ 2004, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 10ನೇ ಫೆಬ್ರವರಿ 2004

2003ನೇ ಸಾಲಿನ 10.11.2003 ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ F.No.1/8/2002-Bo.1 ದಿನಾಂಕ: 10.11.2003 [S.O.1282 (E)] ನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)
NOTIFICATION
New Delhi, the 10th November, 2003

S.O.1282 (E):- In exercise of the powers conferred under sub-clause (iv) of clause (m) of Sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies the following housing finance companies registered under Sub-section (5) of Section 29A of National Housing Bank Act, 1987 and with Tier I capital of Rs. 10 crore (Rupees ten crore) or above as per their audited balance sheet for the year ended 31st March, 2003 to be treated as "financial institution" for the purpose of the said sub-clause:

Sl.No.	Name of the Housing Company	Sl.No.	Name of the Housing Company
1	2	1	2
1.	HDFC Limited, Mumbai	2.	LIC Housing Finance Limited, Mumbai
3.	ICICI Home Finance Limited, Mumbai	4.	Can Fin Homes Limited, Bangalore
5.	Birla Home Finance Limited, New Delhi	6.	Dewan Housing Finance Corp Limited, Mumbai
7.	GIC Housing Finance Limited, Mumbai	8.	PNB Housing Finance Limited, New Delhi
9.	Sundaram Home Finance Limited, Chennai.	10.	BOB Housing Finance Limited, Jaipur
11.	GRUH Finance Limited, Ahmedabad	12.	TATA Home Finance Limited, New Delhi
13.	Cent Bank Home Finance Limited, Bhopal	14.	Orissa Rural Housing & Dev. Corp Ltd., Bhubaneshwar
15.	Vysya Bank Housing Finance Limited, Bangalore	16.	Maharishi Housing Dev. Fin. Corp Ltd., New Delhi
17.	Corpbank Homes Limited, Bangalore	18.	Weizmann Homes Limited, Mumbai
19.	Vibank Housing Finance Limited, Bangalore	20.	National Trust Housing Fin. Ltd., Chennai
21.	Manipal Housing Fin. Syndicate Ltd., Manipal	22.	REPCO Home Finance Limited, Chennai
23.	SICOM Housing Dev. Fin Ltd., Mumbai		

[F. No. 1/8/2002-BO-1]

SHEKHAR AGARWAL, Jt. Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

ಎಲ್. ಸಿದ್ದಯ್ಯ

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,

ಪಿ.ಆರ್. 13 ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.